

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)	
)	
Reorganization and Revision of)	WT Docket No. 94-148
Parts 1, 2, 21, and 94 of)	
the Rules to Establish a New)	
Part 101 Governing Terrestrial)	
Microwave Fixed Radio Services)	
)	
Amendment of Part 21 of the)	CC Docket No. 93-2
Commission's Rules for the Domestic)	
Public Fixed Radio Services)	
)	
McCaw Cellular Communications, Inc.)	RM-7861
Petition for Rulemaking)	
)	
Amendment of Part 101 of the Commission's)	WT Docket No. 00-19
Rules to Streamline Processing of Microwave)	
Applications in the Wireless)	
Telecommunications Services)	
)	
Telecommunications Industry Association)	RM-9418
Petition for Rulemaking)	

COMMENTS OF WINSTAR COMMUNICATIONS, INC.

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SUMMARY

Winstar supports the Commission's efforts to eliminate duplicative, outmoded, and unnecessary regulations concerning microwave radio services through its forbearance authority. To that end, Winstar recommends that the Commission forebear from enforcing certain of its Part 101 information-posting and record-keeping requirements with respect to customer sites for geographic area licensees, such as 39 GHz and LMDS licensees. These rules, as applied to the thousands of customers sites operated by geographic area licensees, are overly burdensome. Moreover, they are not necessary in the public interest, as there are other means to determine to whom equipment belongs in cases of interference.

Winstar also supports various of the proposals contained in the Notice concerning the LMDS technical rules. Winstar asserts that the Part 101 emissions mask is sufficient, subject to some minor clarifications to the Commission's definitions of "assigned frequency" and "authorized bandwidth." Winstar also supports the adoption of certification procedures for fixed microwave transmitters for the 39 GHz and LMDS bands. In addition, Winstar supports TIA's proposals with respect to the 23 GHz band, including increased conditional licensing in this band.

However, Winstar cannot support the Notice's proposals concerning adoption of an auction procedure for point-to-point microwave services. The point-to-point licensed bands are heavily utilized by licensees who require additional spectrum for routine expansion and modification. If the Commission is convinced that it must adopt auction procedures, it should maintain the existing licensing scheme, establishing competitive bidding procedures to resolve mutually exclusive applications only.

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COMMENTS OF WINSTAR COMMUNICATIONS, INC.

Winstar Communications, Inc. ("Winstar"), by its attorneys, hereby submits its comments in the above-captioned proceedings.¹

¹ In re Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services; Amendment of Part 21 of the Commission's Rules for the Domestic Public Fixed Radio Services; McCaw Cellular Communications, Inc. Petition for Rulemaking; Amendment of Part 101 of the Commission's Rules to Streamline Processing of Microwave Applications in the Wireless Telecommunications Services; Telecommunications Industry Association Petition for Rulemaking, WT Docket No. 94-148, CC Docket No. 93-2, RM-7861, WT Docket No. 00-19, RM-9418, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, FCC 00-33 (rel. Feb. 14, 2000) ("Notice"). A summary of the Notice was published in the Federal Register on June 20, 2000. 65 Fed. Reg. 38234 (June 20, 2000).

I. INTRODUCTION.

Winstar, through its various subsidiaries, is: (1) the largest licensee of spectrum in the 38.6-40.0 GHz band ("39 GHz band"), (2) the winning bidder for 931 39 GHz licenses in Auction No. 30, (3) the winner of fifteen LMDS licenses in Auction No. 17, and (4) the licensee of a number of point-to-point links in several other terrestrial microwave fixed radio services, in particular the 18 GHz and 23 GHz bands. Winstar uses its licensed spectrum to provide facilities-based fixed wireless broadband communications services throughout the United States, including local and long distance, data, voice and video services, as well as high speed Internet and information services.

II. FORBEARANCE AND REGULATORY FLEXIBILITY.

Winstar supports the FCC's efforts to eliminate regulations concerning microwave radio services licensed by the Wireless Telecommunications Bureau that are "duplicative, outmoded, or otherwise unnecessary."² Section 10 of the Communications Act provides the Commission with authority to forbear from applying the Act and the Commission's rules to telecommunications carriers if the Commission determines that "enforcement of the regulation or provision is not necessary to ensure just and reasonable charges, practices, classifications, and regulations; enforcement is not necessary for the protection of consumers; and forbearance is consistent with the public interest."³

² Notice, at ¶ 34.

³ Id. at ¶ 83.

A. Geographic Area Licensees Should Be Exempted From Part 101 Information-Posting And Record-Keeping Requirements.

Winstar recommends that the Commission forbear from enforcing the following rules for geographic area licensees, such as those in the 39 GHz and LMDS services:

- Section 101.215, requiring licensees to post licensee contact information at each station;
- Section 101.217, requiring licensees to maintain records of transmitter measurements and maintenance checks for all stations; and
- Section 101.149(b), requiring 39 GHz licensees to post a service-area authorization at each station.

Winstar contends that the above rules no longer are in the public interest for customer sites of geographic area licensees, and that the Commission should forbear from enforcing these rules at customer sites for geographic area licensees.⁴ The rules would continue to apply to licensee hub sites. Consistent with the guidelines for forbearance, these license-posting and record-keeping requirements are not necessary to ensure that geographic area licensees' charges, practices, classifications, and services are just and reasonable, and not unjustly or unreasonably discriminatory. Likewise, they are not necessary for the protection of consumers.

Geographic area, fixed service licensees, including Winstar, presently are operating facilities at thousands of sites across the country. All of these fixed service facilities, like mobile systems, are operated pursuant to a geographic license. The fixed service geographic licensee, like mobile licensees, is the exclusive holder of a channel in a large area that typically covers a metropolitan area. It is unnecessarily burdensome to

⁴ Cf. 47 C.F.R. § 101.215(b) (posting requirements do not apply to remote stations using frequencies listed in § 101.147(b)).

require the maintenance of license and transmitter information at each customer site when these facilities are operated pursuant to a geographic license. Indeed, PCS and cellular telephone users do not keep copies of their carriers' licenses with their mobile telephones.

The Commission required licensees to maintain station records at each site in order to permit licensees or FCC field personnel to identify potential interference problems.⁵ There simply is a minimal benefit to these rules as applied to geographic licensees because interference problems are virtually non-existent for geographic area licensees when compared to the potential for interference that arises from point-to-point, site-specific licensees.

In rejecting a similar proposal regarding elimination of information-posting requirements by Winstar in its comments in WT Docket No. 98-20, the Commission noted that "a transmitter causing interference due to poor maintenance or accident can be found with direction-finding equipment, but without information regarding the owner/operator available at the site, an aggrieved party will not know who to contact for relief from the interference."⁶ Therefore, the Commission concluded that "the public interest in having a[] readily identifiable contact at each transmitter site outweighs the inconvenience to licensees."⁷ However, to the extent that contact information is needed

⁵ See Public Information Collections Being Reviewed by FCC For Extension Under Delegated Authority, PRA 95-019, *Public Notice*, 1995 FCC LEXIS 6777, at *7 (rel. Oct. 16, 1995).

⁶ In re Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20, *Report and Order*, 13 FCC Rcd. 21027, at ¶ 164 (1998).

⁷ Id.

by the FCC or other parties, it is usually clear to whom particular equipment belongs since virtually all equipment operated by geographic area licensees is installed on a building by building basis. In other words, if there is an issue regarding equipment in the building, one can simply contact the building engineer for information about communications companies operating in the building. Most importantly, one would not have access to transmitters within the building without coordinating with the building engineer in the first place.⁸ Geographic area systems are operated much differently than point-to-point systems, and the information-posting and record-keeping rules that made sense for point-to-point systems licensing should not be applied to all terrestrial microwave systems.

Finally, to the extent it is needed, licensee information is readily available from the Commission should a party need to know the geographic licensee in a particular band. For example, any person with Internet access can check licensing records by performing a license search on the Commission's Universal Licensing System ("ULS").⁹ In addition, "[t]he Geographic Information System (GIS) feature within ULS enables users to create customized maps to view market areas of geographic-based licensees and site locations of

⁸ Transmitters are frequently bounded by protective fencing or are situated in locations, such as building rooftops, that are inaccessible to the public; thus, third parties would be precluded from getting close enough to a transmitter to read a sign displaying contact information.

⁹ In re Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20, *Second Report and Order*, 14 FCC Rcd. 9851, at ¶ 8 (1999) ("[A]nyone with a computer and an Internet account will be able to access ULS to stay abreast of the status of licenses and applications.").

site-based licensees," as well as "allow[ing] users to query by call sign or view all licenses authorized to operate within a specific range of frequencies."¹⁰ Thus, the Commission should forebear from enforcing the information-posting and record-keeping regulations in Part 101 with respect to customer sites of geographic area licensees.

III. TECHNICAL ISSUES.

The Notice seeks comment on a variety of issues related to the LMDS technical rules and TIA's proposals concerning the 23 GHz band. For the most part, Winstar supports the proposals contained in the Notice. Winstar agrees that it is important for the Commission to reconsider its technical rules from time to time to ensure that the Part 101 technical rules are not inconsistent with the operations of geographic area systems, such as those operated in the LMDS and 39 GHz bands, as opposed to point-to-point systems.¹¹ In addition, Winstar supports revisions to the rules that would promote greater flexibility in the 23 GHz band, such as increased conditional licensing.¹²

A. The Existing Part 101 Emissions Mask Requirement For Operating Frequencies Above 15 GHz Is Sufficient.

In the Notice, the Commission asks whether the existing Part 101 emission mask requirement will be too severe for LMDS.¹³ Winstar supports the Commission's efforts to provide LMDS operators maximum flexibility with regard to the emission mask requirement. One possible solution is for the Commission to clarify that the Section

¹⁰ Id.

¹¹ Notice, at ¶ 54.

¹² Id. at ¶ 62.

¹³ Id. at ¶ 54; see 47 C.F.R. § 101.111(a)(2)(ii).

101.3 definition of “assigned frequency” includes the center frequency of an individual transmitter/modulator, for block-assigned bands, such as the LMDS band.¹⁴ Additionally, the definition of “authorized bandwidth” should include the nominal radiofrequency bandwidth of an individual transmitter/modulator in block-assigned bands.¹⁵

Clarifications of these definitions would ensure that the current emission mask requirement will be reasonable for LMDS and other block-assigned services in the future. Alternatively, Winstar supports a modification to Section 101.109 and/or Section 101.111 to indicate that LMDS equipment manufacturers and operators can specify and use the actual bandwidth of the designed transmitter.

B. The Commission Should Permit Certification Procedures For Fixed Microwave Transmitters For The 39 GHz and LMDS Bands.

The Notice tentatively concludes that point-to-point and point-to-multipoint transmitters for the 39 GHz and LMDS bands should be subject to the less burdensome equipment verification procedures, rather than certificated by the Commission.¹⁶ Winstar strongly supports this proposal. There is no compelling reason to continue to require that these transmitters be subject to the certification process. Permitting the marketing of fixed microwave transmitters that have been verified by the manufacturer for these services would permit licensees such as Winstar to more rapidly deploy their services.

¹⁴ See 47 C.F.R. § 101.3.

¹⁵ See id.

¹⁶ Notice, at ¶ 57.

C. Winstar Supports Several of TIA's Proposals Concerning The 23 GHz Band.

The Notice seeks comment on TIA's proposed band plan for the 23 GHz band. Winstar agrees with TIA that adoption of a channel plan for this band will permit more efficient use of this band, as well as encouraging more use of the band for short-haul fixed microwave service users.¹⁷ In addition, Winstar supports a frequency tolerance of 0.001% for this band, as well as a spectrum efficiency requirement of 1 bps/Hz.¹⁸

Winstar notes TIA's proposal to designate an additional 200 MHz in the 23 GHz band for low power, limited coverage systems.¹⁹ Winstar does not oppose the proposal but cautions that the adoption of this proposal would reduce by two, from 20 to 18, the number of frequencies eligible for high power operations. As such, the Commission should not designate more than 200 MHz of additional spectrum for low power systems.

D. Winstar Supports Conditional Licensing In The 23 GHz Band.

It was proposed in the Notice that conditional licensing in the 23 GHz should not be permitted because use of these frequencies must be coordinated by the Commission with NTIA, and the two agencies do not have an agreement concerning conditional licensing on these frequencies.²⁰ Winstar disagrees. Conditional licensing allows the microwave industry to operate more efficiently, as it provides licensees "greater

¹⁷ Id. at ¶¶ 63-64.

¹⁸ Id. at ¶ 66.

¹⁹ Id. at ¶ 68.

²⁰ Id. at ¶ 61.

flexibility in coordinating and consolidating construction projects."²¹ Moreover, the additional step of seeking an STA is eliminated.²² Indeed, Winstar has previously advocated that the Commission extend the conditional licensing provisions of Section 101.31(e) to all Part 101 fixed microwave licensees.²³

To this end, the Commission can, as part of this proceeding, work with NTIA and the public sector to establish a conditional licensing method. The Commission should adopt the proposal of the TIA fixed section and adopt streamlined coordination procedures to permit conditional licensing in the 23 GHz band (the same procedure used among non-government users).²⁴ In addition, the Commission should permit conditional licensing on all frequencies in the 23 GHz band if the ERP is not above 55 dBm. Indeed, the Commission's rules and the Part 101 Order do not expressly preclude conditional licensing on all 23 GHz frequencies if this condition is met.²⁵

²¹ Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, WT Docket No. 94-184, *Report and Order*, 11 FCC Rcd. 13449, at ¶ 27 (1996) ("Part 101 Order").

²² Id.

²³ Comments of Winstar Communications, Inc., In re PCIA Request for Streamlining of Regulations, DA 98-1687, at 3-4 (filed Sept. 23, 1998).

²⁴ TIA Petition, at 12-13.

²⁵ See 47 C.F.R. § 101.31(b); Part 101 Order, at ¶ 29 (stating only that the Commission would not allow conditional licensing in the 21.2-23.6 GHz band for operations with an ERP greater than 55 dBm).

IV. BALANCED BUDGET ACT OF 1997.

A. The Commission Should Retain the Current Point-to-Point Licensing System.

In its Notice, the FCC made a number of proposals to impose a more comprehensive auction structure on the existing procedures for licensing point-to-point microwave facilities in the bands above 2 GHz. These proposals include: (1) the auction of geographic area licenses subject to incumbents' rights, as in the 39 GHz band; (2) the relocation of current licensees in conjunction with an auction, as in the 2 GHz band; and (3) the identification of bands in which incumbents would retain co-primary status and other bands in which incumbents would have secondary status vis-a-vis new licensees authorized in an auction, as in the 31 GHz band.²⁶ Winstar opposes each of these three proposals and urges the FCC to retain its current procedures for licensing point-to-point microwave services.

Winstar recognizes the Commission's concern that demand for spectrum above 2 GHz may be growing, yet auctions will not improve spectrum access. The point-to-point licensed bands are utilized by an extremely diverse set of licensees. These licensees have systems in place which require routine expansion and modification. Additionally, to the extent the FCC is proposing to support the relocation of incumbent licensees to accommodate auctions, Winstar simply asks where will they go? With the impending relocation of point-to-point microwave licensees from the 18 GHz and 2 GHz bands to accommodate satellite interests, Winstar is deeply concerned that the FCC is considering more relocation without identifying any new spectrum.

²⁶ Notice, at ¶ 77.

In its Option IV, the FCC proposed to “retain the current licensing approach utilizing a variety of channelization plans and site-by-site licensing, but establish new competitive bidding procedures to resolve mutually exclusive applications.”²⁷ In the event the FCC is adamant about imposing some type of auction procedure on the licensing of point-to-point facilities, Winstar supports Option IV. Maintaining the existing licensing scheme as it is will allow licensees to have the flexibility to request only those links needed to provide support services to their wireless areas.

²⁷ Id.

V. CONCLUSION.

For the foregoing reasons, Winstar respectfully urges the Commission to take the actions outlined herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sophie J. Keefer, do hereby certify that on this 20th day of July, 2000, copies of the foregoing "Comments of Winstar Communications, Inc." were delivered by hand (unless otherwise indicated) to the following parties:

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